

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-222561

DATE: June 5, 1986

MATTER OF:

AMI Industries, Inc.

DIGEST:

A protest filed with the contracting agency more than 10 working days after the protester knew the basis for protest is untimely. Subsequent protest to the General Accounting Office is untimely where it was not initially timely protested with the procuring agency.

In its protest filed with our Office on May 8, 1986, AMI Industries, Inc. (AMI), protests the rejection of its proposal as unacceptable under request for proposals (RFP) No. DAAJ09-85-R-A986 issued on July 24, 1985, by the United States Army Aviation Systems Command, St. Louis, Missouri, for 214 crashworthy armored crew seats for UH-60 helicopters. AMI asserts in its protest that it should have received award under the solicitation because it was the lowest price offeror and "met all the requirements of the solicitation." Specifically, AMI contends that contrary to the agency's position, the solicitation does not require offerors to have a qualified seat available prior to award.

In a report submitted to our Office on May 21, the agency recommends that this protest be dismissed as untimely since the protester was advised of the unacceptability of its proposal in November 1985. The record before us shows that by letter dated November 5, 1985, the agency advised AMI that it had determined that AMI's proposal offered "only a conceptual seat," whereas, as stated in the RFP, a design for the seats must be approved before it can be considered for award. The agency further advised in its letter to AMI that such approval for the seats requires prior manufacture and testing of the seats and that the government could not contract with AMI on the basis of tests to be performed at a future date.

By letter dated April 17, 1986, AMI protested to the contracting agency the position taken in the November 5 letter (which AMI stated it received on November 7) that the solicitation requires manufacture, testing and approval of the seats prior to award. In pertinent part, AMI asserted

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in its protest to the contracting agency that its proposal should have been accepted since the solicitation did not require offerors to have a qualified seat available prior to award.

Our Bid Protest Regulations require that protests be received in our Office or the contracting agency within 10 working days after the basis of the protest is known. 4 C.F.R. § 21.2(a)(2) (1985). AMI's protest to the agency is untimely since it was filed on or after April 17, 1986, more than 5 months from the date that it first learned that its proposal for crew seats was unacceptable since it did not offer seats which would be manufactured, tested and approved prior to contract award. 4 C.F.R. § 21.2(a)(2) supra. See generally Greyhound Support Services, Inc., B-219790.2, Aug. 28, 1985, 85-2 C.P.D. ¶ 242. Where, as here, a protest is first filed with the contracting agency, a subsequent protest to our Office will be considered timely only if the initial protest was timely. 4 C.F.R. § 21.2(a)(3). Since AMI's initial protest to the agency was not timely filed, the subsequent protest to our Office is also untimely and will not be considered. See Micro Research, Inc., B-220778, Jan. 3, 1986, 86-1 C.P.D. ¶ 9.

We note that even if AMI's protest were to be regarded as one against the contract award and not against the determination that its proposal was unacceptable, the protest would be untimely. The record shows that a synopsis of the award was published in the Commerce Business Daily (CBD) on February 20, 1985, and protesters generally are charged with constructive notice of a synopsis published in the CBD. Julie Research Laboratories, Inc., B-219363, Aug. 27, 1985, 85-2 C.P.D. ¶ 232.

The protest is dismissed.



Robert M. Strong
Deputy Associate
General Counsel